

Message Text

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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /031 W

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O 061503Z MAY 74

FM AMEMBASSY PANAMA

TO SECSTATE WASHDC IMMEDIATE 557

INFO GOV PAN CANAL IMMEDIATE

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S E C R E T SECTION 1 OF 3 PANAMA 2564

EXDIS

S/S-O PASS TO THE SECRETARY'S PARTY FOR
AMBASSADOR BUNKER FROM BELL

EO 11652: XGDS

TAGS: PN, PFOR

SUBJ: US-PANAMA TREATY NEGOTIATIONS: REPORT OF
DEVELOPMENTS 4/28 - 5/5/74.

I. SUMMARY

COMFORTED BY THE ATTENTIONS OF THE HIGHEST-RANKING UNITED STATES OFFICIALS DURING THE CHIEF NEGOTIATOR TALKS IN WASHINGTON APRIL 23-25, AND WITH EYES OPENED WIDER BY PERSONAL EXPOSURE TO THE CONGRESS, FOREIGN MINISTER TACK HAS (A) ACCEPTED YOUR PROPOSAL THAT THE PARTIES NOW MOVE INTO SUBSTANTIVE NEGOTIATION, AND (B) SENT SIGNALS OF PANAMANIAN NEGOTIATING FLEXIBILITY.

SINCE YOUR DEPARTURE WITH THE SECRETARY, THE DEPUTY NEGOTIATORS HAVE BEEN WORKING IN WASHINGTON AND ARE NOW TO BE COMPLETING ON CONTADORA ISLAND A FINAL PAPER IDENTIFYING THE MAJOR ISSUES IN THE NEGOTIATIONS, IN PREPARATION FOR THE CHIEF NEGOTIATORS' FIRST SUBSTANTIVE TALKS IN PANAMA AT THE END OF MAY.

TO PREPARE FOR THE BARGAINING TO COME I RECOMMEND ESTABLISHING
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A GROUP TO REVIEW EXISTING UNITED STATES NEGOTIATING POSITIONS,

NOW ALMOST THREE YEARS OLD, TO ASSURE THAT WE DO NOT BEGIN WITH UNSUITABLE CHIPS.

II. THE DEPUTY NEGOTIATORS' TALKS

AS THE CHIEF NEGOTIATORS HAD INSTRUCTED, THE DUPUTIES RESUMED THE PROCESS OF ISSUE IDENTIFICATION APRIL 29 AND CONTINUED UNTIL THE MORNING OF MAY 5. LATER THAT DAY KOZAK AND I DEPARTED FOR PANAMA TO COMPLETE THE PROCESS AT THE MINISTER'S REQUEST AND WITH YOUR CONCURRENCE.

FOR REASONS I DO NOT KNOW THE MINISTER SENT WORD THAT WE SHOULD PROCEED TO CONTADORA MAY 6 EVEN THOUGH IT TURNS OUT THAT AMBASSADOR GONZALEZ IS NOW NOT SCHEDULED TO ARRIVE ON THE ISLAND UNTIL SEVERAL DAYS LATER.

PERHAPS THE MINISTER WISHES THE U S REPRESENTATIVES TO BE OUT OF THE REACH OF THE PRESS. OR PERHAPS, AS COULD BE INFERRED FROM SOME OF GONZALEZ' REMAKRS IN WASHINGTON, THERE ARE TO BE SOME PANAMANIAN OFFICIALS "DROPPING IN" ON CONTADORA PRIOR TO THE AMBASSADOR'S ARRIVAL. THESE PEOPLE WORK IN ARCANE WAYS.

IN ANY EVENT KOZAK AND I HAVE ENOUGH TO DO WITHOUT THE AMBASSADOR'S COMPANY FOR A TIME. TAKING THE INITIATIVE - PRE-SUMABLY IN RESPONSE TO OUR PERSISTENT PLEAS FOR PANAMANIAN INITIATIVES, NOT JUST REACTIONS TO AMERICAN ONES - GONZALEZ PRODUCED AT THE END OF OUR WASHINGTON TALKS A NEW WORKING PAPER ENTITLED "TENTATIVE CONSOLIDATION OF THE MAJOR ISSUES", WITH AN OFFICIAL DATE OF 4/29/74.

AT THIS WRITING I HAVE ONLY JUST TRANSLATED IT, BUT IT LOOKS LIKE SOMETHING WE CAN USEFULLY WORK WITH DURING THE CONTADORA TALKS. I SHALL BE CONSULTING WITH WASHINGTON AGENCIES THOUGHTOUT.

I MIGHT MENTION ONE ASPECT OF GONZALEZ' PRODUCT NOW. ON DELIVERING IT HE SAID THAT THE MINISTER RECOGNIZED THE UNITED STATES HAD STRAINED HARD TO DISCOVER SOME POINTS IN THE MINISTER'S 3/19/74 PAPER WHICH COULD BE CHARACTERIZED AS MAJOR ISSUES, AND APPRECIATED THAT GESTURE, BUT WOULD NOT HOLD US TO THE
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SEVEN WE HAD SO IDENTIFIED. HE ASKED THAT THE DEPUTIES RE-EXAMINE THEM "WITH REALITY IN MIND."

I SAID THAT WAS THE SORT OF CANDOR THE U S SIDE APPRECIATED, AND WE COULD RE-EXAMINE THEM TOGETHER, BUT RIGHT OFF I THOUGHT WE SHOULD ELIMINATE THE ONE WHICH DEALS WITH THE "THREAT OF REAL AGGRESSION", AND HE AGREED. (THE DEFENSE DEPARTMENT HAD FELT THAT THIS IS A MATTER WHICH MIGHT BETTER BE HANDLED BY BURYING

IT IN THE MAJOR ISSUE DEALING WITH OVERALL DEFENSE MATTERS.)

III. FUTURE SCENARIO

DURING THE DEPUTIES' WASHINGTON TALKS GONZALEZ CONFIRMED, ON INSTRUCTIONS, THE MINISTER'S AGREEMENT WITH YOUR PROPOSAL THAT, ONCE A MAJOR-ISSUES PAPER IS APPROVED, IT WOULD BE APPROPRIATE TO PROCEED INTO SUBSTANTIVE CONVERSATIONS. HE BELIEVED AS YOU DID THAT THE SUB-ISSUES AND "TECHNICAL MATTERS" WILL MORE OR LESS FALL INTO PLACE AS THE MAJOR ISSUES ARE TREATED.

THE MINISTER PROPOSED THAT YOUR PLANNED VISIT TO CONTADORA IN LATE MAY BE DEVOTED, FOLLOWING APPROVAL OF THE ISSUES PAPER, TO THE FIRST SUBSTANTIVE CONVERSATIONS - AND THAT THE ISSUE OF JURISDCITION BE ADDRESSED FIRST.

I TOLD GONZALEZ THAT I THOUGHT YOU WOULD WELCOME THE OPPORTUNITY TO BEGIN TALKING SUBSTANCE ON YOUR NEXT VISIT. BUT I WOULD HAVE TO THINK ABOUT WETHER THE JURISDICTION ISSUE SHOULD BE TAKEN UP FIRST, CONSULT IN WASHINGTON, AND FINALLY PRESENT RECOMMENDATIONS TO YOU. GONZALEZ QUICKLY REPLIED THAT IF THE UNITED STATES THOUGHT DIFFERENTLY, PANAMA WOULD WELCOME THOSE THOUGHTS.

PERHAPS WE SHALL THINK DIFFERENTLY. UNDER EXISITNG PRESIDENTIAL GUIDANCE YOUR NEGOTIATING FLEXIBILITY IS ABOUT AT ITS BROADEST WITH RESPECT TO JURISDCITION. WE SHALL HAVE TO SORT OUT THE SEVERAL PROS AND CONS OF YOUR AGREEING TO TREAT AT THE VERY OUTSET AN ISSUE ON WHICH YOUR CONCESSIONARY POWERS ARE MAXIMAL - AND OF OVERRIDING IMPORT TO PANAMA.

AMBASSADOR GONZALEZ ADMITTED THAT JURISDICTION HAD BEEN SELECTED (A) BECAUSE FROM THE VIEWPOINT OF TORRIJOS AND THE PANAMANIAN
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COMMONG MAN IT IS CRITICAL, AND (B) BECASUSE OF A BELIEF THAT IF THIS ISSUE COULD BE RESOLVED SATISFACTORILY, RESOLUTIONS OF OTHER ISSUES WOULD COME MORE EASILY. ANOTHER PANAMANIAN REASON, DOUBTLESS, IS THAT JURISDICTION IS FINE TERRAIN ON WHICH TO TEST AMERICAN NEGOTIATORS IMMEDIATELY.

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TO CONCLUDE THE DISCUSSION OF THE FUTURE SCENARIO, THE AMBASSADOR SAID HE WISHED TO MAKE TWO POINTS, ONE PERSONAL AND ONE OFFICIAL.

NOTE BY OC/T: NOT PASSED SECRETARY'S PARTY.

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ACTION SS-30

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S E C R E T SECTION 2 OF 3 PANAMA 2564

EXDIS

S/S-O PASS TO THE SECRETARY'S PARTY FOR

AMBASSADOR BUNKER FROM BELL

THE PERSONAL POINT: TACK WAS SO OVERWHELMED AT THE HIGHEST-LEVEL ATTENTIVENESS TO HIM IN WASHINGTON, SO MUCH MORE AWARE AFTER HIS WASHINGTON VISIT OF THE DANGER TO PANAMA INHERENT IN THE CONGRESSIONAL OPPOSITION, AND SO MUCH MORE CONFIDENT IN THE AMERICAN OFFICIALDOM CONCERNED WITH THE PANAMA PROBLEM, THAT "NOW IS THE TIME FOR THE UNITED STATES TO STRIKE."

I SAID ONLY THAT I CAUGHT HIS MEANING. WHATEVER TORRIJOS' SENTIMENTS IN THE PAST, HE NOW DESIRES A TREATY PROMPTLY - ALTHOUGH FOR PUBLICATION HE MAINTAINS THAT TIME IS NO OBJECT. BUT TACK'S EARLIER EXPERIENCES WITH THE UNITED STATES, COUPLED WITH HIM RECONDITE NATURE, MAKE FOR RATHER LESS "POLITICAL FLEXIBILITY" RESPECTING TREATY NEGOTIATION THAN TORRIJOS HAS LIKED. BY HAVING SOFTENED UP TACK MARKEDLY, THE UNITED STATES SHOULD MOVE QUICKLY, FOR IT NOW HAS GOOD PROSPECTS OF OBTAINING FROM HIM A TREATY THAT IS "EQUITABLE" NOT ONLY TO PANAMA BUT ALSO TO THE UNITED STATES. SUCH A TREATY MIGHT HAVE BETTER PROSPECTS IN THE CONGRESS, AND SO TORRIJOS MIGHT HAVE HIS TREATY AND THE UNITED STATES HAVE SOME PEACE AND QUIET IN PANAMA.

IN THINK IT IS TRUE TACK HAS BEEN SOFTENED. INDEED, DURING YOUR TENURE THERE HAS EVOLVED A CLIMATE FOR NEGOTIATION AS

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FELICITOUS AS IT COULD PROBABLY EVER BE FOR THE UNITED STATES. BUT I DO NOT THINK IT FOLLOWS THAT "STRIKING" IS A SUITABLE STRATEGY. IT IS THE CAREFUL, METHODICAL AND RELAXED APPROACH TO THIS NEGOTIATION WHICH YOU SELECTED THAT HAS DONE THE TRICK THUS FAR AND I THINK IT WILL CONTINUE TO DO SO, THOUGH PERHAPS WE MIGHT SPEED IT A LITTLE. I CAN VOUCH FOR HOW DISTASTEFUL THE PANAMANIAN HAVE FOUND A HARD-HITTING, FAST-PACED AND UTTERLY EFFICIENT AMERICAN NEGOTIATING APPROACH.

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AMBASSADOR GONZALEZ' OFFICIAL POINT WAS THAT THE MINISTER WISHED TO REITERATE HE HAD BEEN "PROFOUNDLY IMPRESSED" BY THE AMERICAN SIDE'S "CANDID, REAL- WORLD ATTITUDE" IN RECENT WEEKS TO CERTAIN MATTERS IT ISSUED IN THE NEGOTIATION.

HE HAD INSTRUCTIONS, GONZALEZ SAID, TO SPECIFY THAT THE MINISTER (1) ACCEPTS THAT PANAMA AND THE UNITED STATES MAY WELL DESIRE TO HAVE A "FUNCTIONAL RELATIONSHIP" EXIST BETWEEN THEM AFTER THE TREATY'S TERMINATION;

(2) IS NOW CONVINCED THAT THE U S IS DETERMINED TO END THE ELEMENTS OF THE US-PANAMA RELATIONSHIP WHICH ARE OFFENSIVE TO PANAMA'S DIGNITY AND SOVEREIGNTY,, INCLUDING PERPETUITY;
(3) ACCEPTS THE CONCEPT OF CALLING THOSE RIGHTS WHICH THE US WILL RETAIN "USE" OR "ADMINISTRATIVE" RIGHTS (EVEN THOUGH SOME MAY, IN A TECHNICAL SENSE,BE JURISDICTIONAL), AND OF RELATING THEM TO SPECIFIC FUNCTIONS;

(4) UNDERSTANDS THAT WHILE THE QUALITY AND QUANTITY OF RETAINED US RIGHTS WILL GENERALLY BE DECLINING OVER TIME, THERE IS NEED FOR "VERY PRUDENT TRANSITIONS";

(5) AGREES THAT THE PARTIES SHOULD CEASE ARGUING OVER THE RELATIONSHIP THAT NOW EXISTS, AND CONCERN OURSELVES SOLELY WITH THE "ARCHITECTURE OF THE FUTURE RELATIONSHIP";

(6) AGREES NOT ONLY THAT A SIMPLE TREATY IS NEEDED, BUT ALSO WISHES TO KEEP ANY ANNEXES SIMPLE; AND

(7) ACCEPT THE U S EXPLANATION THAT SINCE THERE WILL BE NO 1903
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ARTICLE III ("AS IF SOVEREIGN,") IN THE NEW TREATY, PANAMA NEED NOT FEAR UNILATERAL U S INTERPRETATIONS OF THE TREATY, AS WELL AS THE U S EXPLANATION THAT ANY DIFFERENCES OF VIEW WILL BE

HANDLED AUTOMATICALLY BY THE MECHANISMS ESTABLISHED TO PROVIDE FOR PANAMA'S PARTICIPATION IN OPERATION AND DEFENSE (WHICH IS ALSO WHY THERE CAN BE A SIMPLE TREATY).

AS I READ IT, THIS IS THE HEADWAY WE HAVE MADE FROM THE FOREGOING:

(1) PANAMA HAS RECEDED FROM THE PUBLIC, HARD-LINE POSITION THAT THE UNITED STATES MUST HAVE NO PRESENCE AT ALL REMAINING IN PANAMA AFTER THE TREATY'S TERMINATION;

(2) PANAMA IS WILLING TO GET AROUND ITS PUBLIC POSITION THAT ALL THE UNITED STATES' JURISDICTIONAL RIGHTS SHOULD CEASE VERY QUICKLY, BY DISGUIISING WHAT ARE JURISDICTIONAL RETAINED U S RIGHTS THROUGH DENOMINATING THEM AS "USE" RIGHTS RELATED TO OPERATION AND DEFENSE FUNCTIONS;

(3) PANAMA HAS BECOME PERHAPS MORE FLEXIBLE RESPECTING THE TIME PERIODS DURING WHICH THE U S WILL CONTINUE TO EXERCISE VARIOUS TYPES OF RIGHTS; AND

(4) PANAMA HAS RECEDED FROM THE HARD-LINE POSITION THAT THE NEW TREATY MUST SPELL OUT EVERY DETAIL OF THE NEW RELATIONSHIP LEST THE UNITED STATES DO PANAMA IN SUBSEQUENTLY VIA TREATY INTERPREATIONS.

IN ADDITION, SOME OLD PANAMANIAN SHIBBOLETHS RESPECTING US MOTIVATIONS MAY HAVE BEEN WEAKENED.

IV. INTERNAL USG PROCEDURES

IN LIGHT OF THE PANAMANIAN'S WILLINGNESS TO PROCEED TO BARGAINING, I BELIEVE IT WOULD BE OPPORTUNE TO BEGIN LOOKING AGAIN AT EXISTING UNITED STATES NEGOTIATING POSITIONS. THEY DATE, ESSENTIALLY, FROM THE FALL OF 1971, AND TO MY KNOWLEDGE HAVE NOT SINCE BEEN REVIEWED.

REVIEWING THEM AT THIS TIME WOULD HELP TO PRECLUDE THE
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POSSIBLITY THAT THE AMERICAN SIDE MIGHT FIND ITSELF NEGOTIATING FROM OUTDATED, OR OTHERWISE UNSUITABLE, BASES. WHEN NEGOTIATIONS WERE RESUMED IN 1971, FOLLOWING A FOUR-YEAR SUSPENSION, IT WAS FOUND THAT THE POSITIONS ADOPTED DURING THE 1964-67 ROUND WERE NO LONGER VALID IN IMPORTANT SUBSTANTIVE RESPECTS. THAT WAS BECAUSE OUR ASSESSMENT OF BOTH THE UNITED STATES' INTERESTS AND OF PANAMA'S POSTURE HAD CHANGED RADICALLY IN THE INTERVENING PERIOD. POSSIBLY THE 1971 POSITIONS ARE BASED ON ASSESSMENTS AND ASSUMPTIONS WHICH REMAIN VALID TODAY, POSSIBLY NOT.

I BELIEVE IT ESSENTIAL, APART FROM REVIEWING THE
SUBSTANCE OF THOSE POSITIONS, TO CAST THEM IN AN
ADDITIONAL, NEW FORMAT.

NOTE BY OC/T: NOT PASSED SECRETARY'S PARTY.

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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /031 W
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FM AMEMBASSY PANAMA
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USCINCSO IMMEDIATE

S E C R E T SECTION 3 OF 3 PANAMA 2564

EXDIS

IT WILL BE SOME TIME BEFORE THE TWO PARTIES ADDRESS TECHNICAL
ISSUES, TREATY FORMULAE AND THE LIKE. IN THE IMMEDIATE FUTURE
WE WILL BE ADDRESSING MAJOR ISSUES WITH A VIEW TO ARRIVING AT
"THRESHOLD AGREEMENTS" BETWEEN THE CHIEF NEGOTIATORS, - TO SERVE
AS CONCEPTUAL GUIDES FOR THE NEGOTIATION OF SUBSIDIARY ISSUES AND,
ULTIMATELY, THE DRAFTING OF TREATY LANGUAGE.

BUT AT PRESENT THE OVERALL UNITED STATES POSITION IS EMBODIED
IN A SET OF DETAILED, DRAFT TREATY ARTICLES. AND THESE LEND
THEMSELVES POORLY TO THE STYLE AND THE EMPHASIS OF YOUR AND THE
MINISTER'S NEGOTIATION, PARTICULARLY AT THIS EARLY STAGE. THEY
ALSO DO NOT TRACK WITH THE FORMAT OF THE "STATEMENT OF
PRINCIPLES", WHICH IS NOW THE BASIC NEGOTIATING DOCUMENT. WHAT
IS NEEDED IS A CONCISE, CONCEPTUAL STATEMENT OF THE UNITED
STATES' POSITION ON EACH OF THE MAJOR ISSUES UNDERLYING THE
"PRINCIPLES" - STATEMENTS
WHICH, IF WE HAD OUR WAY, WOULD BE TRANSFORMED INTO THE
THRESHOLD AGREEMENTS.

ALSO I BELIEVE IT WOULD BE WISE TO DEVELOP A NUMBER OF
ALTERNATIVE CONCEPTS WHICH ADVANCE THE UNITED STATES'

INTERESTS UNDER EACH OF THE ISSUES, TO PROVIDE YOU WITH FALLBACK
SUBSTANTIVE FORMULAE.

I SHOULD ADD THAT THE FOREGOING EXERCISE WOULD PRODUCE
ADDITIONAL, NOT SUBSTITUTIONAL, POSITION PAPERS. THE BASIC
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POSITIONS WOULD REMAIN AS SET FORTH IN THE 1971 DRAFT TREATY
ARTICLES - AS THEY MIGHT BE UPDATED AND STREAMLINED BY THE
REVIEW PROCESS. OF COURSE YOU MAY EVENTUALLY WISH TO EXERT
THE AUTHORITY YOU POSSESS UNDER THE EXISTING PRESIDENTIAL GUIDE-
LINES TO CHANGE THOSE POSITIONS.

IF YOU CONCUR, I BELIEVE THAT A STATE-DEFENSE "REVIEW GROUP"
SHOULD BE FORMED TO ACCOMPLISH THE FOREGOING, AND MEET SOON.
FROM STATE THE REPRESENTATIVES WOULD, I THINK, BE SPECIAL TREATY
ADVISOR WYROUGH, POLITICAL OFFICER (AND TREATY AFFAIRS
OFFICER-DESIGNATE) HOWARD, AND ATTORNEY-ADVISER KOZAK. THE
GROUP MIGHT USEFULLY INITIATE ITS WORK WITH THE
POSITIONS ON JURISDICTION, GIVEN THE CHANCE WE WOULD BE
TAKING UP THAT FIRST.

V. MISCELLANEA

ON THE TUNA BOAT SEIZURE, I SPOKE WITH THE FOREIGN MINISTER
AND AMBASSADOR GONZALEZ IN WASHINGTON, AND IT WAS AGREED THAT
WE SHOULD HANDLE WHAT REMAINS OF THIS PROBLEM IN THE MOST
UNDETECTABLE WAY POSSIBLE AND WITH NO REFERENCE WHATEVER TO
TREATY NEGOTIATIONS. THE PANAMANIAN ASSURED ME THAT THE SEIZURE
WAS A FLUKE, CERTAINLY NOT THE INITIATION OF ANY PROJECT TO
SEIZE AMERICAN TUNA BOATS.

AMBASSADOR GONZALEZ ASKED FOR A "TINY CONCESSION", AND I GAVE
IT. AS YOU KNOW THE INITIAL LANGUAGE OF THE "PRINCIPLES" WAS
SPANISH, AND IN ONE PLACE THEY SAID THAT PANAMAWILL "CONFERIR"
TO THE UNITED STATES CERTAIN RIGHTS. WE TRANSLATED "CONFERIR"
AS "GRANT", AND THAT HAS APPARENTLY SENT THE OLD PANAMANIAN
ADVISERS UP THE WALL. NOT EVEN THE 1903 TREATY USES THE AWFUL
WORD "GRANT", THEY PROTESTED. TO SOOTHE THEM, GONZALEZ ASKED
IF WE MIGHT USE SOME OTHER WORD THAN "GRANT".

AFTER CHECKING WITH THE DEPARTMENT'S LANGUAGE SERVICES I FOUND
WE COULD AS WELL USE "CONFER UPON", THOUGH THAT IS NOT THE
PREFERRED TRANSLATION. PROCLAIMING IT A MAJOR CONCESSION, I
TOLD THE AMBASSADOR THAT WHILE WE WOULD NOT CHANGE EXISTING
TEXTS, IN THE FUTURE WE WOULD ACCEPT THINGS AS BEING CONFERRED
UPON US, NOT GRANTED. HE WAS RELIEVED: "YOU CANNOT BELIEVE HOW
IMPORTANT THESE LITTLE THINGS ARE IN PANAMA." I SAID HE WAS
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RIGHT.

VI. ACTION REQUESTS

1. THAT YOU ADVISE THE DEPARTMENT, COPY TO PANAMA, OF WHETHER YOU APPROVE THE FORMATION OF A "REVIEW GROUP" FOR THE PURPOSES DESCRIBED.

2. THAT YOU ADVISE ME WHETHER YOU NOW FORESEE ANY IMPEDIMENT TO YOUR PLANNED TRAVEL TO PANAMA TOWARD THE END OF MAY. (I HAVE WARNED THE PANAMANIAN THAT THE FLUID MIDDLE EAST SITUATION MIGHT REQUIRE SOME ADJUSTMENT OF YOUR SCHEDULE, AND THEY FULLY ACCEPT THAT, BUT ARE NATURALLY INTERESTED IN DOING SOME ADVANCE PLANNING, ESPECIALLY SINCE YOUR TALKS ARE TO TOUCH SUBSTANCE).

JORDEN

NOTE BY OC/T: NOT PASSED SECRETARY'S PARTY.

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